Supreme Court, U.S.
FILED

No. 06-724 NOV 24 2006

OFFICE OF THE CLERK

In The

Supreme Court of the United States

CHARLES CONNELL McCARTHY,

Petitioner,

v.

THE SUPREME COURT OF CALIFORNIA
and STATE BAR COURT,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of California

PETITION FOR A WRIT OF CERTIORARI

CHARLES CONNELL McCARTHY, *pro se*
A member of the Supreme Court Bar
since March 20, 1961
P.O. Box 261182
Encino, CA 91426
Telephone: (818) 981-1391

QUESTIONS PRESENTED

1. Whether, the EN BANC ORDER OF DISBARMENT IN THE SUPREME COURT OF CALIFORNIA, *In re Charles Connell McCarthy*, Case No. S145019, State Bar Court Case No. 03-N-02791; 04-O-11745, filed October 10, 2006 (App. A) – **without oral arguments – without a *judicial* hearing – without a written *judicial* decision – and without a meaningful *judicial* review** of the important federal **ISSUES PRESENTED** therein – deprived Petitioner McCarthy of his due process and equal protection rights under the First and Fourteenth Amendments of the United States Constitution?

2. Whether, the telephone messages left on Petitioner McCarthy's telephone by the Clerk of the California Supreme Court (App. G) constitute an unlawful interference in a matter then before the California Supreme Court and a violation of Petitioner McCarthy's due process and equal protection rights under the First and Fourteenth Amendments of the U.S. Constitution?

3. Whether, "the three members of the Review Department Of The State Bar Court thereby **willfully** violated **Rule 1-100**. Rules of Professional Conduct (A) Purpose and Function, e.g., "to protect the public and to promote respect and confidence in the legal profession."!" as alleged in Paragraph 3 of Petitioner's VERIFIED PETITION FOR ORDER DIRECTING THE REVIEW DEPARTMENT OF THE STATE BAR COURT TO IMMEDIATELY COMPLY WITH ~~BU~~SINESS AND PROFESSIONS CODE §6081. In the Matter of CHARLES C. McCARTHY, Case No.: 03-N-02791 and 04-O-11745, filed July 5, 2006? (App. A)

QUESTIONS PRESENTED – Continued

4. Whether, State Bar Assistant General Counsel, Tracey McCormick's "cryptic," July 25, 2006 letter to the Clerk of the California Supreme Court – contained a "single sentence declaring **'the matter moot'** [which] implemented an evil, cunning State Bar scheme to summarily deprive Petitioner of due process of law in violation of the Fourteenth Amendment of the Constitution of the United States" as alleged in Paragraph **2.** (p1) of Petitioner's SUPPLEMENT TO VERIFIED PETITION FILED HEREIN ON JULY 5, 2006 WITH THE CLERK OF THE SUPREME COURT AT LOS ANGELES, CALIFORNIA dated August 3, 2006? (App. G)

5. Whether, the State Bar thereby intended "to induce the Clerk of the Supreme Court Of California to cause the prompt Dismissal With Prejudice of Petitioner's Verified Petition filed herein on **July 5, 2006**!" as alleged in Paragraph **3.** (p2) of Petitioner's SUPPLEMENT TO VERIFIED PETITION dated August 3, 2006? (App. G)

6. Whether, "[t]he State Bar thereby intended to avoid having to file their Verified responses to Petitioner's Verified Petition, re the allegations of ¶s 2 and 3 thereof, charging that members of the State Bar Court [of] **"willfully"** committed acts involving **"moral turpitude"** in violation of **Rule 1-100**, Rules of Professional Conduct and State Bar Act §6106 respectively!" as alleged in Paragraph **4.** (p2) of Petitioner's SUPPLEMENT TO VERIFIED PETITION dated August 3, 2006? (App. G)

QUESTIONS PRESENTED – Continued

7. Whether, "[i]rrefutably, the State Bar's proceedings against Petitioner constitutes cruel and unusual punishment to a man who stated in his State Bar Declaration of November 9, 1999:

> 'I have earned a personal and professional reputation over fifty years that I cherish and for which I will die.' (**Ex 1**, ¶1, p1 quoted at ¶3, p2 Verified Petition)"

as alleged in Paragraph **5.** (p2) of Petitioner's SUPPLEMENT TO VERIFIED PETITION dated August 3, 2006? (App. G)

8. Whether, members of the State Bar and the State Bar Court are above the law applicable to all members of The State Bar of California – including, but not limited to:

> 1) Business and Professions Code #6081; 2) State Bar Act §6106; 3) Rule 1-100 Rules of Professional Conduct and 4) the due process clause of the 14th Amendment to The Constitution of the United States! as alleged in Paragraph **7.** (p2) of Petitioner's SUPPLEMENT TO VERIFIED PETITION dated August 3, 2006? (App. G)

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully requests that the Court issue a writ of certiorari to review the EN BANC ORDER OF DISBARMENT IN THE SUPREME COURT OF CALIFORNIA, filed October 10, 2006 IN RE CHARLES CONNELL McCARTHY ON DISCIPLINE Case No. S145019, State Bar Court Case No. 03-N-02791; 04-O-11745.

OPINION BELOW

The Supreme Court Of California's **En Banc** ruling, filed October 10, 2006, (App. A) "ordered that Charles Connell McCarthy, State Bar No. 20803, be disbarred from the practice of law and that his name be stricken from the roll of attorneys" – **without oral argument – without a *judicial* hearing – without a written *judicial* decision – and without a meaningful *judicial* review** of the important federal **ISSUES PRESENTED.**

The Supreme Court Of California's **En Banc** ruling Filed August 23, 2006 stated in relevant part that: "Petition for writ of review DENIED." (App. B)

The State Bar letter to Charles C. McCarthy In the Matter of the Disbarment of Charles C. McCarthy dated October 30, 2006 (App. C) states in relevant part:

> "This is to remind you that by Order filed October 10, 2006, copy enclosed, the Supreme Court disbarred you from the practice of law effective November 9, 2006."

JURISDICTION

The Supreme Court Of California's **En Banc** Order filed October 10, 2006 that Petitioner Charles Connell McCarthy should be **summarily disbarred** (App. A) invokes the jurisdiction of this court pursuant to 28 U.S.C.A. Section 1257(a) and Rule 10(c) of the rules of the Supreme Court of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances. U.S. Const. Amend. I.

2. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the Unites States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. Amend. XIV.

STATEMENT OF THE CASE

Factual and Legal Genesis

McCarthy's VERIFIED PETITION FOR ORDER DIRECTING THE REVIEW DEPARTMENT OF THE

STATE BAR COURT TO IMMEDIATELY COMPLY WITH BUSINESS AND PROVISIONS CODE §6081. In the Matter of CHARLES C. McCARTHY, Case No.: 03-N-02791 and 04-O-11745 – was stamped "**RECEIVED Jul – 5 2006**" by the "CLERK SUPREME COURT Los Angeles." (App. E), Petitioner refers to and incorporates herein as though set forth in full, all of the verified allegations thereof, including the prayer:

> "WHEREFORE, petitioner CHARLES C. McCARTHY respectfully requests that this Court forthwith issue its ORDER DIRECTING THE REVIEW DEPARTMENT OF THE STATE BAR COURT TO IMMEDIATELY COMPLY WITH BUSINESS AND PROFESSIONS CODE §6081 – including, an appropriate reprimand and/or sanctions to assure that members of THE STATE BAR COURT shall never again willfully violate the unambiguous provisions of Business and Professions Code §6081!
>
> Dated: July 5, 2006"

REASONS FOR GRANTING THE WRIT

The EN BANC ORDER OF DISBARMENT IN THE SUPREME COURT OF CALIFORNIA, *In re Charles Connell McCarthy*, Case No. S145019, in the State Bar Court Case No. 03-N-02791; 04-O-11745, filed October 10, 2006 (App. A) – followed the precedent of *In re Rose*, 93 Cal.Rptr.2d 298 (2000), wherein the Court by separate order, denied the petition for review and imposed the discipline recommended by the State Bar Court – **without oral argument – without a *judicial* hearing – without**

a written *judicial* decision – and without a meaningful *judicial* review – after deciding that:

> "We conclude that this court may summarily deny an attorney's petition for review of a State Bar Court decision recommending disbarment or suspension without violating constitutional principles." (*Id.*, 436)

There follow quotes from the cogent, insightful – indeed compelling – dissents of California Supreme Court Justices Kennard and Brown in the matter of *In re Rose*:

> **KENNARD, J.,**
>
> "The majority's decision here produces a startling anomaly: Attorneys are the only persons whose state occupational licenses can be revoked or suspended without a judicial hearing. When the right to continue practicing a trade or profession is at stake, only attorneys are denied their day in court." (*Id.*, 461)
>
> "To summarize: The state Constitution grants litigants a right to oral argument before this court renders a judgment, and an attorney suspension or disbarment order is a judgment rendered by this court; therefore, an attorney has a right under the state Constitution to oral argument before this court suspends or disbars the attorney." (*Id.*, 462)
>
> "But attorneys do not have recourse to administrative mandate proceedings because their licenses are suspended or revoked not by an administrative determination, but by this court's orders. As a consequence, under the majority's decision today, only attorneys can have their licenses suspended or revoked without a *judicial* hearing and a written *judicial* decision. This

> disparate treatment of attorneys raises serious due process and equal protection questions. I do not address these issues, however, because I conclude that the state Constitution's oral [***79] argument and written-opinion provisions apply to attorney suspension and disbarment proceedings." (*Id.*, 465)

BROWN, J. [now on the U.S. Circuit Court of Appeals for the District of Columbia)

> "We should not, however, pretend the current legal order does not mark a transformation in the attorney discipline process, one in which a constitutional touchstone – meaningful judicial review by an article VI court – has been jettisoned." (*Id.*, 466)

> "Under the new regime, attorneys penalized for professional misconduct get less in the way of genuine judicial review of discipline than licensed nonattorneys [***83] do." (*Id.*, 466)

> "At the heart of the majority opinion is the supposition that review by any other name is still review and passes constitutional muster: that due process is satisfied by any process, however much the decisionmakers may be [**983] driven by bureaucratic agendas or political ties. In this corner of the law, at least, we seem to be presiding over a union of the legislative and judicial components of government. It may be efficient; it certainly isn't pretty. And because it seems antithetical to the constitutional design, I dissent." (*Id.*, 470)

By following the precedent of *In re Rose* (*Id.*, 436), The Supreme Court Of California intentionally refused to consider and dispose of the important federal questions

presented by McCarthy's VERIFIED PETITION FOR WRIT OF REVIEW.

LEGAL DISCUSSION

The State Bar letter to the Clerk of the Court, Supreme Court of California (App. F) states in relevant part:

"Dear Clerk,

> This letter is to advise the court that the State Bar of California does not intend to file an answer to the above petition, pursuant to California Rules of Court, Rule 28(a)(2), unless the Court requests briefing on the issues. In any event, it appears from the Court's website that the record of discipline was filed on the same day as the Petitioner's brief, rendering the matter moot.
>
> If you have any questions or concerns, please feel free to call me at the number listed above.
>
> Sincerely,
>
> Tracey McCormick
> Assistant General Counsel"

The record does not indicate a reply from the Clerk of the Court!

However, transcripts of telephone messages left on Charles C. McCarthy's telephone by the Clerk of the California Supreme Court (App. D) include the following message for Petitioner McCarthy:

> "The Court is just wondering whether you would like to present a petition for a review based on the merits of the case. And if that's the case,

> there will be a motion – or if you can submit a motion to withdraw the petition pending at this point, then you can resubmit it on the merits of the case." (3:5-10)

The legal propriety of the Clerk's proposal is highly questionable at best as an unlawful attempt to influence proceedings before the California Supreme Court!

Petitioner filed his SUPPLEMENT TO VERIFIED PETITION FILED HEREIN ON JULY 5, 2006 WITH THE CLERK OF THE SUPREME COURT AT LOS ANGELES, CALIFORNIA dated August 3, 2006 (App. G).

Paragraph **1.** thereof refers to the State Bar's letter dated **July 25, 2006** "addressed to the Clerk of the California Supreme Court re this matter, by Tracey McCormick, Assistant General Counsel of The State Bar Of California."

Petitioner McCarthy then states:

> "**2.** Ms. McCormick's cryptic, single sentence declaring **"the matter moot"** implemented an evil, cunning State Bar scheme to summarily deprive Petitioner of due process of law in violation of the 1st and 14th Amendments of The Constitution of the United States.
>
> "**3.** The unambiguous intent of the State Bar's **July 25, 2006** letter was to induce the Clerk of the Supreme Court Of California to cause the prompt Dismissal With Prejudice of Petitioner's Verified Petition filed herein on **July 5, 2006**!
>
> "**4.** The State Bar thereby intended to avoid having to file their Verified responses to Petitioner's Verified Petition, re the allegations of ¶s 2 and 3 thereof, charging that members of the

State Bar Court of **"willfully"** committed acts involving **"moral turpitude"** in violation of **Rule 1-100**, Rules of Professional Conduct and State Bar Act §6106 respectively!

"**5.** Irrefutably, the State Bar's proceedings against Petitioner constitutes cruel and unusual punishment to a man who stated in his State Bar Declaration of November 9, 1999:

> "I have earned a personal and professional reputation over fifty years that I cherish and for which I will die." (**Ex 1**, ¶1, p1 quoted at ¶3, p2 Verified Petition)

"**6.** The State Bar's implementation of its reprehensible scheme referred to above, is an arrogant, shameful failure to act responsibly as "***an administrative arm***" of the Supreme Court of the State of California! (*Herrscher v. State Bar* (1935) 4 Cal.2d 399, 49 P.2d 837.

"**7.** Ineluctably, The Supreme Court of the State of California must impose severe sanctions upon The State Bar Court and its individual members responsible for their outrageous, unlawful conduct referred to in ¶s 1, 2 and 3 of Petitioner's Verified Petition filed herein on **July 5, 2006** App. E; and ¶s 2, 3, 4, 5 and 6 of Petitioner's Supplement to Verified Petition filed herein on July 5, 2006 with the Clerk of the Supreme Court at Los Angeles, California. In the Matter of Charles C. McCarthy, Case No.: 03-N-02791 and 04-O-11745, August 3, 2006 (App. G). Members of the State Bar Court are not above the law applicable to all members of The State Bar of California – including, but not limited to:

1) Business and Professions Code #6081; 2) State Bar Act §6106; 3) Rule 1-100 Rules of Professional Conduct and 4) the due process clause of the ~~14th~~ Amendment to The Constitution of the United States!"

CONCLUSION

This Court should forthwith grant this Petition and award appropriate costs and damages to Petitioner McCarthy. Attorneys are routinely deprived of their precious Constitutional right to practice law by an arrogant, self-serving **Apparatchik – the California State Bar!**

Like a judicial Pontius Pilate – The California Supreme Court routinely denies appeals by a multitude of California attorneys from State Bar disbarment proceedings. All attorneys not employed by the California State Bar pray for the U.S. Supreme Court's "Emancipation Proclamation"!

Respectfully submitted,

CHARLES CONNELL MCCARTHY, *pro se*
A member of the Supreme Court Bar
since March 20, 1961
P.O. Box 261182
Encino, CA 91426
Telephone: (818) 981-1391

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APPENDIX A

(State Bar Court Case No. 03-N-02791; 04-O-11745)

S 145019

IN THE SUPREME COURT OF CALIFORNIA

EN BANC

(Filed Oct. 10, 2006)

IN RE **CHARLES CONNELL MCCARTHY**
ON DISCIPLINE

It is hereby ordered that **CHARLES CONNELL MCCARTHY, State Bar No. 20803**, be disbarred from the practice of law and that his name be stricken from the roll of attorneys. Costs are awarded to the State Bar in accordance with Business and Professions Code section 6086.10 and are enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

GEORGE
Chief Justice

APPENDIX B

S.B.C. No. 03-N-02791/04-O-11745
S145019

IN THE SUPREME COURT OF CALIFORNIA

En Banc

(Filed Aug. 23, 2006)

IN RE CHARLES CONNELL MCCARTHY on Discipline

Petition for writ of review DENIED.

Corrigan, J., was absent and did not participate.

GEORGE
Chief Justice

APPENDIX C

THE STATE BAR OF CALIFORNIA
OFFICE OF PROBATION

[SEAL]

1149 SOUTH HILL STREET,
LOS ANGELES, CALIFORNIA
90015-2299

TELEPHONE: (213) 765-1000
TDD: (213) 765-1566
FAX: (213) 765-1439
http://www.calbar.ca.go

October 30, 2006

Charles C. McCarthy
P O Box 261182
Encino CA 91426

In re: **S145019 In the Matter of the Disbarment of Charles C. McCarthy**

Dear Charles C. McCarthy:

This is to remind you that by Order filed October 10, 2006. copy enclosed, the Supreme Court disbarred you from the practice of law effective November 9, 2006.

You will note that the Court has also ordered you to pay costs to the State Bar of California, pursuant to the Business and Professions Code 6140.7, wherein it states: "Costs unpaid by a member who resigns with disciplinary charges pending or by a member who is suspended or disbarred shall be paid as a condition of reinstatement of membership."

Please note, Rule of Professional Conduct 1-311 requires that a firm or attorney who employs an attorney who is disbarred provide certain notices to the State Bar and to clients. While there is no prescribed form, in order to assist attorneys to comply with the rule, the State Bar has

created notices for the employer's use. If you are to become employed by an attorney or a law firm, please remind your employer of this requirement. Forms may be obtained by contacting Paula Gavaldon at (213) 765-1000.

Very truly yours,

/s/ [Illegible]
Eddie Esqueda
Probation Deputy

/ee
Enclosures

APPENDIX D

TRANSCRIPT OF TELEPHONE MESSAGES

FOR CHARLES C. McCARTHY

FROM THE CALIFORNIA SUPREME COURT CLERK'S OFFICE

JULY 2006

RE THE MATTER OF THE DISBARMENT

OF CHARLES C. McCARTHY

CASE NO. S145019

* * *

"The same day that the petition was filed, the record was received. So at this point pretty much your petition does not address the merits of the case.

The Court is just wondering whether you would like to present a petition for a review based on the merits of the case. And if that's the case, there will be a motion – or if you can submit a motion to withdraw the petition pending at this point, then you can resubmit it on the merits of the case."

* * *

APPENDIX E

THE SUPREME COURT OF
THE STATE OF CALIFORNIA

In the Matter of	) Case No.: 03-N-02791 and
CHARLES C. McCARTHY	) 04-O-11745
A Member of the State Bar.	) VERIFIED PETITION
	) FOR ORDER DIRECTING
	) THE REVIEW DEPART-
	) MENT OF THE STATE
	) BAR COURT TO IMME-
	) DIATELY COMPLY WITH
	) BUSINESS AND PRO-
	) FESSIONS CODE §6081

(Filed Jul. 5, 2006)

TO THE HONORABLE CHIEF JUSTICE AND ASSOICATE [sic] JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Business and Professions Code §6081, Petitioner, CHARLES C. McCARTHY respectfully requests that this Court order the Review Department Of The State Bar Court to "immediately file" with this Court, a "certified copy" of its OPINION ON REVIEW AND ORDER, allegedly filed in the State Bar Court Clerk's Office Los Angeles on or about May 08 2006 – which stated: "We recommend that Charles C. McCarthy be disbarred and his name be stricken from the roll of attorneys in this State." (p10)

In support of this petition, petitioner alleges that:

1. To date, the State Bar has not filed a certified copy of said Opinion On Review And Order thereby violating the unambiguous provision of

Business and Professions Code §6081, which states in relevant part:

> "Upon the making of any decision recommending the disbarment or suspension from practice of any member of the State Bar, the board shall **immediately** file a certified copy of the decision together with the transcript and the findings, with the Clerk of the Supreme Court." (emphasis added)

2. By its patent violation of Business and Professions Code §6081, the Review Department Of The State Bar Court presumably sought unconscionable advantage in their preordained quest to recommend the disbarment of Petitioner Charles C. McCarthy. In so doing, members of the State Bar Court committed acts involving moral turpitude, dishonesty or corruption in violation of State Bar Act §6106.

3. Indisputably, the three members of the Review Department Of The State Bar Court thereby **willfully** violated **Rule 1-100.** Rules of Professional Conduct (A) Purpose and Function. eg. "to protect the public and to promote respect and confidence in the legal profession."!

4. The right to practice law is a valuable right, one which should not be taken away under circumstances that have even the slightest tendency to suggest any possible unfairness or disadvantage therein to the attorney whose right to remain in his profession is challenged. *Neblett v. State Bar of Cal.* (1941) 17 Cal.2d 77, 109 P.2d 340.

5. Attached hereto as Exhibit 1 and by reference made a part hereof, is a true and correct copy of the 20 page DECLARATION OF CHARLES C.

McCARTHY BEFORE THE STATE BAR OF CALIFORNIA filed on November 9, 1999 which states in relevant part:

"I have earned a personal and professional reputation over fifty years that I cherish and for which I will die." (¶1 p1)

"I was born on August 22, 1922 in Minneapolis, Minnesota; attended grammar and high school in Evanston, Illinois; then completed 3 years at Northwestern University until 1943 when I volunteered for service in the U.S. Navy, first on board torpedo boats then in the Navy Air Corps from which I was honorably discharged in 1945. I thereafter attended the Northwestern University School of Law from which I received my Juris Doctor degree in 1948." (¶3 pp1,2)

"I was admitted to the practice of law in California by the Supreme Court of California on June 14, 1949, thereafter actively practicing law in the Westwood and Brentwood areas of Los Angeles until January 27, 1994 at which time I requested INACTIVE status as of December 31, 1991; from that date to July 6, 1999, I was an INACTIVE member of the State Bar of California. On July 6, 1999 I transferred at my request to the ACTIVE status. Since that date I have been, and am at the date hereof, an ACTIVE member of the State Bar of California. No recommendation for discipline for professional or other misconduct has ever been made by the Board of Governors or a Disciplinary Board to the Supreme Court of the State of California. All of the above is evidenced by a letter from the Supervisor,

Membership Records of the State Bar Of California dated September 29, 1999, a copy of which is attached hereto as Ex 1." (¶4 p2)

6. Petitioner Charles C. McCarthy has not at any time since December 31, 1991 represented any clients in any pending matters subject to the provisions of California Rules Of Court, Rule 955(a). On August 18, 2006, Petitioner, Charles C. McCarthy, will be 84 years of age – God willing!

WHEREFORE, petitioner CHARLES C. MCCARTHY respectfully requests that this Court forthwith issue its ORDER DIRECTING THE REVIEW DEPARTMENT OF THE STATE BAR COURT TO IMMEDIATELY COMPLY WITH BUSINESS AND PROFESSIONS CODE §6081 – including, an appropriate reprimand and/or sanctions to assure that members of THE STATE BAR COURT shall never again willfully violate the unambiguous provisions of Business and Professions Code §6081!

Dated July 5, 2006

Respectfully submitted,

/s/ Charles C. McCarthy
CHARLES C. McCARTHY

VERIFICATION

I, CHARLES C. McCARTHY, am the Petitioner in this proceeding. I have read the foregoing Petition and know the contents thereof. The factual statements set forth in the Petition are within my personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on the third day of July, 2006 in Los Angeles, California

/s/ Charles C. McCarthy
CHARLES C. McCARTHY

Charles C. McCarthy
17320 Burbank Blvd. Apt. #14
Encino, CA 91316

EXHIBIT 1

Henry T. Heuer (69006)
PRINCE & HEUER
A Professional Law Corporation
2029 Century Park East, Suite 2550
Los Angeles, California 90067-2901
Telephone: (310) 277-7442
Facsimile: (310) 277-7458

Attorneys for
CHARLES C. McCARTHY.

BEFORE THE STATE BAR OF CALIFORNIA

In re	) Case No.: 98-O-528
CHARLES C. McCARTHY, Respondent.	) **DECLARATION OF CHARLES C. McCARTHY**
	) Date: November 9, 1999
	) Time: 3:00 p.m.
	) Place: *

DECLARATION OF CHARLES C. McCARTHY

I, Charles C. McCarthy, declare as follows:

I am a party to this action. The facts recited in this declaration are known to me of my own personal knowledge and if called upon to testify as a witness, I could and would competently testify thereto.

I have earned a personal and professional reputation over fifty years that I cherish and for which I will die.

2. I have formed an informal and abiding conviction that neither my wife Joy nor I have expended KAU or PUA monies for anything other than partnership purposes and that I have violated no fiduciary duty to those partnerships or any of their Limited Partners.

3. I was born on August 22, 1922 in Minneapolis. Minnesota, attended grammar and high school in Evanston. Illinois; then completed 3 years at Northwestern University until 1943 when I volunteered for service in the U.S. Navy, first on board torpedo boats then in the Navy Air Corps from which I was honorably discharged in 1945. I thereafter attended the Northwestern University School of Law from which I received my Juris Doctor degree in 1948.

4. I was admitted to the practice of law in California by the Supreme Court of California on June 14, 1949, thereafter actively practicing law in the Westwood and Brentwood areas of Los Angeles until January 27, 1994 at which time I requested INACTIVE status as of December 31, 1991; from that date to July 6, 1999, I was an INACTIVE member of the State Bar of California. On July 6, 1999 I transferred at my request to the ACTIVE status. Since that date I have been, and am at the date hereof, an

ACTIVE member of the State Bar of California. No recommendation for discipline for professional or other misconduct has ever been made by the Board of Governors or a Disciplinary Board to the Supreme Court of the State of California. All of the above is evidenced by a letter from the Supervisor, Membership Records of the State Bar Of California dated September 29, 1999, a copy of which is attached hereto as Ex 1.

5. In 1967, 1968 and 1969, I organized three California Limited Partnerships to wit: Kau-Kona Land Co. (KAU) as of Oct 10, 1967; Puapuaa-Kona Land Co (PUA) as of Nov 20, 1968; and Onouli-Kona Land Co (ONO) as of Dec 31, 1969 (not a subject of this proceedings).

1) I drew the AGREEMENTS OF LIMITED PARTNERSHIP (KAU Ex 2, PUA Ex 3) each of which recited that the: "Limited Partners are desirous of participating with General Partners [McCarthy and Prince] in purchasing the Real Property, with limited liability and without assuming any managerial responsibilities in connection therewith."

2) "The Purpose of the Business" of the Limited Partnerships was to: "purchase and hold the Real Property [situated near Kailua-Kona, Island of HI] for investment." (Art. III p 2) during the 20 year term of each Limited Partnership. (Art. IV C. p 3) (KAU and PUA Article and page references are identical.) The Limited Partnerships purchased unimproved acreage near Kona for the following prices:

1967: KAU	5 mi N of Kona	1,400 ac	$1.4 mil	($1,000 per ac)
1968: PUA	1 mi S of Kona	178 ac	1.2 mil	($6,700 per ac)
1969: ONO	10 mi S of Kona	300 ac	1.5 mil	($5,000 per ac)
		1,878 ac	$4.1 mil	

Attached is a map of the Island of Hawaii (Ex 4) and a map of NORTH KONA (Ex 5) which identify the KAU, PUA and ONO parcels.

3) Each purchase closed on payment of 2 years of prepaid interest. Thereafter, interest was payable annually for a minimum of 5 years. Each purchase was structured as a tax shelter using soft money, eg. income tax deductible prepaid interest, with the objective of realizing a capital gain on sale; hopefully before hard money, eg non-deductible payments on purchase note principal, came due. Capital gains, were then taxable @ 25%! Marginal taxes on *ordinary income* were then as high as 90%! To assure the deductibility of interest under then existing tax laws, Prince and I assumed personal liability for any deficiency on foreclosure!

4) To enhance the prospects of success and avoid misunderstandings with the Limited Partners or third parties, I vested the General Partners with "absolute discretion" to sell, exchange, convey title, lease, mortgage, refinance etc., "all or any part of the Real Property . . . upon such terms as they deem proper." – specifically including the following rights and powers:

4.1) "all of the rights, powers and liabilities of partners in a partnership without limited partners under the Partnership Law of the State of California." (Art X B. p 13);

4.2) "the exclusive right to determine whether and when, to make distributions to the partners." (Art V D. p 7);

4.3) the authority to establish "One or more partnership bank accounts . . . in the name of the partnership or otherwise as the General Partners

or either of then shall see fit, in such bank account or accounts as they may from time to time determine, into which the moneys of the partnership shall be deposited. Withdrawals from any such bank account or accounts shall be made upon such signature or signatures as the General Partners or either of them may designate." (Art XV p 19); and

4.4) The activities of the Limited Partners were restricted: "The Limited Partners shall take no part in, or interfere in any manner with, the conduct or control of the Partnership business or the sale, leasing, or refinancing of its assets, and shall have no right or authority to act for or bind the Partnership," (Art XI p 15)

5) At and prior to their entering into the Agreements Of Limited Partnership each Limited Partner was informed by the General Partners that the partnerships might participate in the joint venture development of their properties; provided that the deductibility of interest or capital gain treatment of the proceeds of sale would not likely be jeopardized.

To facilitate that very attractive possibility, each of the limited partnership agreements contained a paragraph entitled "Waiver of Doctrine of Partnership Opportunity," which provided that: "Any of the Partners, General or Limited, may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to the ownership, financing, leasing, operation, management, syndication, brokerage, and development of real property;" and "The fact that a Partner, General or Limited, or a member of his family is employed by, or is directly or indirectly interested in or connected with, any persons, firms or corporation employed by the Partnership to render or

perform a service . . . shall not prohibit the General Partners from executing a deed. . . . with . . . such person, firm, or corporation or from, other dealing with him or it. . . . " (Art X D, pp 13, 14)

6) Each of the Limited Partners invested in the Limited Partnerships in reliance on:

(i) my impeccable reputation of integrity and my competence as an experienced real estate attorney and developer; (ii) my unqualified endorsement of Prince, who none of the Limited Partners had previously known; and (iii) warranties and representations by me and Prince that:

> 6.1) we would not rely solely on real estate brokers to find buyers or joint venture development partners for the Real Properties but would proactively utilize our best efforts to merchandise the Real Properties on our own;
>
> 6.2) Prince would establish his permanent residence in Kailua-Kona, Hi in Jan 1968 [which he did] for the purpose of confirming the long term commitment of the partnerships to the responsible development of their sizeable prime properties; and that
>
> 6.3) Prince and I would utilize our best efforts to create good will for the Limited Partnerships on the Big Island and in Honolulu; especially with lenders and governmental agencies having jurisdiction over zoning and development.

7) The 23 original KAU Limited Partners made initial capital contributions totaling $300,000, as set forth in Ex A of the Agreement of Limited Partnership of Kau-Kona Land Co. (Ex 2)

Robert J. Schiller of Guild Management Corp., a long time friend and client of mine, brought entertainment business clients of his into the KAU Limited Partnership including: Steve McQueen, Brian [Robert] Keith, Ricardo Montalban and Sue Lyon – all of whom contributed about 50% of KAU's initial $300,000 capitalization which was entirely income tax deductible. I brought in the rest of the investor Limited Partners, all of whom were long-time friends and clients of mine including; Prince, with whom I had developed a 12 unit condominium (Verde Pines) on Burbank Blvd., a few blocks East of Van Nuys Blvd.: and a 40 unit condominium (Essex Town Houses) at the corner of Hamlin and Kester, across the street from Van Nuys High School in the San Fernando Valley; Elinor Mayer Kernaghan, (whose father headed the Oscar Mayer Meat Packing Co.), a client and good friend of mine beginning at Lincoln Grammar School in Evanston, Illinois; and Baird C. Brittingham, brother of my close friend and client, Thomas E. Brittingham, III. In 1963, 64, and 65 I was Tom's attorney and partner in: Blue Lagoon Villas, a 181 unit luxury condominium running from the Pacific Coast Highway down to the ocean in South Laguna; and The Flying Butler restaurant located on Newport Blvd. across the street from the Newport Beach City Hall. Tom died in Jan 1965. I represented Baird as the Executor of Tom's Estate.

8) The 28 original PUA Limited Partners made initial capital contributions totaling $290,000, as set forth in Ex A of the Agreement of Limited Partnership of Puapuaa-Kona Land Co. (Ex 3)

Once again, Robert J. Schiller's clients including: Brian Keith, Steve McQueen, Ricardo Montalban and Sue Lyon, contributed about 50% of PUA's initial capitalization

of $290,000. I brought in the rest of the Limited Partners including long time friends:

Norman Q. Brill, M.D., Chief of the Neuro-Psychiatric Institute at UCLA;

Anna Marie Peterson, my mother-in-law;

Paul D. Arthur, Ph.D., professor of mathematics at UCLA and UC Irvine, a long time client;

Robert B. Jarchow, a high school classmate of mine at Evanston Township High School;

George V.R. Mulligan, Jr., then manager of the Los Angeles office of Booz, Allen and Hamilton, a long time client; and

Gerald Lipsky, Esq., a successful Beverly Hills entertainment lawyer and friend of mine since taking Forest Cool's Bar Review course together in 1949.

9) The investor Limited Partners of ONO were similarly composed.

10) As co-equal General Partners, Prince and I each had a 20% profit participation in KAU and 15% profit participations in PUA and ONO. I gave my brother John 2 of my 20 point profit participation in KAU and 1 of my 15 point profit participations in PUA and ONO. John is identified as a "Special Limited Partner" in each of the Agreements Of Limited Partnership to distinguish him from "Regular Limited Partners" who were obligated to make calls for "Additional Capital Contributions," which John was not obligated to do. (Art V B. p 4)

11) The Limited Partners in each of the partnerships were entitled to receive a return of all their capital contributions before any profits were distributed to the General Partners; except for 25% of any capital gains and 50% of any ordinary income realized by the Limited Partnerships which was payable to me and Prince so we could pay income taxes attributable to us. (Art V D, pp 7, 8)

4. There follows a chronology of relevant events occurring after formation of the three Limited Partnerships:

1971

KAU wins Eminent Domain settlement with the state of Hawaii in the amount of $1,650,000 from which I distributed over $300,000 to the KAU LPs after paying off the $1.4 mil purchase note on which we had paid nothing except pre-paid interest, 2 years of which was returned to KAU. Thus, we owned 1,000 acres of prime Kona land all free and clear. This was a major financial gain for all of the partners – at least a four-fold increase on investment.

1976

Prince resumed his residence in California, thereby breaching his fiduciary duties to each of the three Limited Partnerships to reside in Kona to promote the business affairs of the Limited Partnerships as he had warranted and represented to each of the Limited Partners to induce their investing in these three ventures.

1978

KAU petitioned Hawaii County to rezone the upper 732 acres of 1,000 acres from 5 acre Ag (100+ lots) to 4 acre Ag (197 lots); but it was nullified by Prince's letter to

the Hawaii County zoning director objecting to the proposal to rezone in his capacity as a co-equal General Partner of KAU.

1979

1) 1-29-79: McCarthy v Prince LASC No WE C 57669. I filed a Complaint to remove Prince as a General Partner in all three partnerships for many reasons including: Prince's abandonment of his duties as General Partner by resuming his California residence in 1976 and his nullification of KAU's petition to rezone the upper 732 acres of 1,000 acres from 5 acre Ag (100+ lots) to 3 acre Ag (197 lots) in 1978. (Ex 6)

2) KAU resubmitted petition to rezone upper 732 acres.

1982

KAU and PUA each borrowed $300,000 from Sterling Bank of Los Angeles. Both loans were personally guaranteed by me and my wife, Joy. Loan proceeds were used to purchase 900 water units by each partnership from Hawaii County costing $225,000 @$250 per unit in order to enhance the marketability of the properties.

1983

1) Hawaii County approved KAU rezone of upper 732 acres to 3 acre Ag (197 lots) from 5 acre AG (100+ lots) resulting in a $13.4 mil appraisal!

2) 4-1-83: Estate of Richards v McCarthy, Prince and ONO, HI Civil No. 8719; Complaint to Foreclose ONO for delinquencies on the purchase note.

3) 9-6-83: McCarthy vs Prince, JUDGMENT AFTER TRIAL BY COURT, LASC No. WE C 57967 (Ex 7), removed

Prince as a General Partner in all three partnerships; his 20% profit participation in KAU was reduced to 10% and 10% awarded to me; his 15% profit participation in PUA was reduced to 11% and 4% awarded to me; and his 15% profit participation in ONO was reduced to 10% and 5% awarded to me; Prince's retained interests to be thereafter identified respectively as a "Special Limited Partnership Interest" similar to my brother John's interests wherein he had no authority as a General Partner and no obligation to make calls as did a Regular Limited Partner.

1984

1) 6-6-84: ONO filed Chapter 11 in Hawaii. Case No 84-00269, to stay foreclosure, because the limited partners were not disposed to making capital calls. This caused ONO to default on the 1969 purchase note, as amended.

2) Hawaii County Water Dept demanded that KAU and PUA each pay an additional $1,500 per water unit or $1,350,000 for the 900 water units by July 1986.

3) 9-24-84: Estate of Richards v McCarthy et al. HI Civil No. 8719: foreclosure Judgment entered on which McCarthy, Prince and ONO were jointly and severally liable for $2,242,988! (Ex 8)

1985

1) 8-18-85: Hawaii County Council adopts zoning ordinance for Hawaii's first "private agricultural park" discussed at length in my 7-8-85 letter to the KAU Limited Partners including the subjects of: water, loans, marketability, appraisal and projected profits. (Ex 9; 6 pp, enc. 35 pp) and my 9 page summary of 8-18-85 entitled "*HUALALAI* Plantation." (Ex 10)

2) 9-3-85: ONO property (300 acres) sold at Bankruptcy Court auction for $1,350,000 ($4,500 per acre) to the Richards Estate. Order entered 11-1-85. Richards applies sale proceeds to the Judgment leaving a deficiency of $1,121,588 for which I was jointly severally liable with Prince!

3) PUA received Eminent domain award for State's taking of the Queen K Highway right of way and paid off the $300,000 Sterling Bank loan from proceeds! The PUA property was thereby divided into 100 acres above and 65 acres below the new highway.

4) 11-22-85: I issued a 15th call to PUA Limited Partners for Additional Capital Contributions delinquent if not received by 12-22-85. (Ex 11)

1986

7-18-86: KAU and PUA bankruptcies;

(a) KAU filed Chapter 11 in the Honolulu Federal Court, to stay forfeiture of 900 water units to Hawaii County Water Dept for non-payment of $1,350,000; and to stay Sterling Bank's foreclosure for non-payment of the $300,000 land loan used to buy 900 water units in 1982. All KAU LPs were noticed!

(b) PUA filed Chapter 11 in Hi, solely to stay forfeiture of 900 water units to Hawaii County Water Dept for non-payment of $1,350,000. All PUA LPs were noticed!

1987

1) May 87: About 30 KAU and PUA Limited Partners, including Nazar H. Ashjian, Jr., attended a 3 hour

meeting. The M.A.I. appraisal of KAU's Hualalai Plantation at $13,400,000 was a central topic of discussion!

2) 10-30-87: I sent a letter to the KAU LPs enclosing 2 copies of Amendment To Agreement Of Limited Partnership extending the term of the partnership. (Ex 12)

3) 11-25-87: I sent a letter to the KAU and PUA Limited Partners re seeking the Bankruptcy Court's order authorizing conveyance of the Partnerships' properties to joint venture development projects to be funded by loan commitments of CitiSavings of San Antonio, Texas due to close by 12-31-87 – time of the essence! (Ex 13)

At about the same time an attorney for a few successor LPs sent out notices inviting the KAU and PUA LPs to attend a meeting on 12-2-87 "to discuss Mr. McCarthy's proposals for disposition of the partnership properties, as set forth in the papers served with the Notice of Hearing setting a Bankruptcy hearing for December 9, 1987." (Ex 14)

About 30 KAU and PUA LPs attended the 2 hour meeting including Nazar H. Ashjian, Jr., Also attending was Leon Daniell, a Harlingen, Texas developer who had played a key role in generating the Citi commitment. I was anxious for the LPs to meet him. He made a very good impression. Daniell owned about 800 precious water units left over from his recent sale of 300 acres near Kona that were an integral part of the deal with Citi which had a 20% profit participation in each of the proposed projects. The proposed joint ventures were unanimously approved by the KAU and PUA LPs present or represented at the meeting. No one objected!.

4) 12-7-87: I sent another letter to the KAU and PUA Limited Partners re the proposed joint venture development projects to be funded by CitiSavings. (Ex 15)

5) 12-9-87: Honolulu Bankruptcy Court hearing re approval of KAU and PUA proposed joint venture development projects to be funded by CitiSavings. Dissident successor Limited Partners representing a small minority of interests appear by counsel at the hearing and object Citi is spooked. The matter was continued by the Bankruptcy Court.

6) 12-23-87: I filed a Motion To Dismiss PUA from Honolulu Bankruptcy Court (Ex 16) because water rights were available for purchase from Leon Daniell **without having to pay $1,350,000.**

"Accordingly, on or before the hearing on the instant motion [noticed for 1-15-88], the Debtor will enter into an option agreement to purchase up to 835 water units from Daniell."

On entry of the Order of Dismissal. Daniell also agreed to loan sufficient monies to Debtor to pay all creditor claims in full. All PUA LPs were noticed!

The same dissident successor LPs who appeared by counsel and objected in the KAU bankruptcy proceedings on 12-11-87 likewise appeared by counsel and objected to PUA's Motion To Dismiss!

<u>1988</u>

1) PUA Bankruptcy

1-26-88: Order Dismissing PUA from Bankruptcy Court entered.(Ex 17) All PUA LPs were noticed!

1-28-88: I received attorney Neuhoff's 3 page letter VIA CERTIFIED MAIL Re: PUA (i) Rationale of client's opposition at Dec 9, 1987 Bankruptcy Ct hearing and to PUA Motion To Dismiss heard 1-15-88; (ii) "As we all know from 20 years experience everything does no [sic] always proceed according to your pro forma plans;" (iii) "... if the land could be sold now for $3,000,000, the Partnership could derive the same benefit in the near future without incurring the risks and delays of development." (Ex 18)

2-2-88: I sent a letter to the PUA LPs which stated, "we were unable to make a deal with CitiSavings."

"The Court having granted our Motion To Dismiss the bankruptcy proceedings I have decided to sell our property to a developing entity to be formed by Leon Daniell and myself, on the terms set forth in the enclosed copy of Offer For Purchase Of Real Estate and Acceptance (including a $1,750,000 four year 9.5% note and a 30% profit participation!)."

"As shown in the enclosed Pro-Forma, our partnership is better off by about $1.5 million than in the Citi deal. The partnership realizes a Gross Return of $4,882,350, 70% of which, or $3,417,645, goes to the Limited Partners." (Ex 19)

2-9-88: James A. Wagner, PUA's Honolulu Bankruptcy attorney, received a 2 page letter from Ashjian's attorney, Tim Bruinsma of Hill, Farrer and Burrill, concluding **"In short, the proposed transaction appears to either be an admission by the General Partner of a substantial failure in his management of the existing partnership, an attempt by the General Partner to**

utilize his position to achieve preferential treatment ahead of the limited partners or both." cc: Nazar H. Ashjian, Jr., CPA (Ex 20)

2-17-88: Three-hour meeting of about 20 PUA Limited Partners, including Ashjian, held, noticed by the same dissident successor Limited Partners "to adopt a plan to oppose McCarthy's proposed plans" disclosed in the Motion To Dismiss PUA from bankruptcy. (Ex 21) I received a letter dated 2-17-88 from attorney Levy re: "The meeting of this morning," setting forth a proposal. (Ex 22)

2) 3-10-88: STERLING BANK JUDGMENT AGAINST CHARLES C. MCCARTHY AND JOY V. MCCARTHY IN THE CIRCUIT COURT OF THE FIRST CIRCUIT STATE OF HAWAII CIVIL NO. 86-1451 for $386,673.90. (Ex 23)

3) 4-18-88: At my direction, PUA bankruptcy attorney Wagner sent letters to the PUA LPs enclosing a copy of a Purchase Agreement dated 2-12-88 noting changes from earlier drafts (Ex 24)

4) KAU Bankruptcy:

5-2-88: Honolulu Bankruptcy Court confirmed sale of KAU's 1,000 acres for $5,250,000 – all cash. All KAU Limited Partners noticed!

5-11-88: KAU filed Motion For Order Authorizing Payment Of All Creditors And Partial Disbursement To Equity Owners. (Ex 25) All KAU Limited Partners noticed!

6-9-88: Honolulu Bankruptcy Court Order Authorized Charles C. McCarthy's Payment Of All Creditors And Partial Disbursement Of Profits To Equity Owners of $2,094,600. (Ex 26) All KAU LPs noticed!

6-13-88: Sale of KAU land for $5,250,000 cash closed with disbursement of net cash proceeds of $4,373,022.30 to CCM as the General Partner of KAU.

5) 7-13-88: I paid $600,000 for the $2,242,988 JUDGMENT filed 9-24-84 in Estate of Richards v McCarthy, Prince et al. Hi Civil No. 8719 which was assigned to me. (see Ex 8)

6) 7-27-88: I sent a letter to the KAU Limited Partners re disbursement of Bankruptcy Court sale proceeds. (Ex 27)

7) 9-8-88: Estate of Bryden

PETITION TO ESTABLISH ESTATE'S CLAIM OF OWNERSHIP TO PROPERTY AND FOR ORDER DIRECTING DISBURSEMENT TO EQUITY OWNER by Ned R. Nelsen, Executor of the Will of Elinor Mayer Bryden. LASC No P 674 148, filed 9-8-88 (Ex 28)

1989

1) 7-11-89: Order Nunc Pro Tunc entered providing in part that the Executor "shall, on behalf of said Estate of ELINOR MAYER BRYDEN, sign and give to KAU KONA LAND CO. the Warranty, Indemnification and Release Re Preliminary Distribution of Profits presented by KAU KONA LAND CO. for signature by its limited partners with the addition to said Release of the following: Notwithstanding the foregoing it is understood and agreed that the Release shall not include or prevent any claims the undersigned Estate of ELINOR MAYER BRYDEN may have concerning or with respect to any future partnership distributions." (Ex 29) (emphasis added)

Accordingly, the Executor signed the Warranty, Indemnification and Release Re Preliminary Distribution of Profits. Then I sent a KAU check to the Executor in the Estate's favor for $209,460 which closed the matter.

2) 9-18-89 Ashjian's letter to me by Certified Mail states: "Please receive this letter as an additional demand for my share of the July 27, 1988 preliminary distribution."! (Ex 30)

3) 9-22-89 I sent a letter to the KAU LPs this date stating: "Be advised that Kau-Kona Land Co, recently filed a 9-count Complaint in the Third Circuit Court of Hawaii against CitiSavings and their attorneys for treble compensatory damages of $22 million and punitive damages of $19,500,000.00"

"Kau's claims mirror those being made by me and Leon Daniell against the same defendants. The costs of litigation are being shared equally." (Ex 31)

4) 9-22-89 KAU Attorney Bullis responds to Ashjian's Sept 18 letter stating:

"1. As you well know, preliminary distribution will be made to you on receipt of the duly executed Receipt and Release, as has been done will *all* of the other Limited Partners. (emphasis added)

2. Mr. McCarthy's letter dated September 22, 1989 to the Kau-Kona Land Co. Limited Partners responds to the other subject of your letter." (Ex 32)

1990

1) 6-12-90 My Memo to the PUA LPs enclosed a copy of Hawaii Zoning Ordinance No. 9063 evidencing zone change to upper 99 acres. (Ex 33)

2) 9-26-90 My Memo (by my secretary) to the KAU LPs enclosed a copy of a newspaper article from West Hawaii Today about our lawsuit against Citi entitled "Massive civil suit brewing over soured development." Trial began 9-18-90. My Memo stated: "Jury selection and opening statement went extremely well." (Ex 34)

1991

1) 3-28-91 Ashjian's letter to me by Certified Mail stated that: "Within ten (10) days of this letter I demand that you deliver to me my share of the initial distribution as you made to the other limited partners." If not received "I shall instruct my attorney to proceed with an action to obtain the monies for me along with any related damages."

Additionally: "Should I not have an answer from you I shall reflect such currently unresolved concerns of mine as to the correctness of a K-1 in my 1990 personal income tax filings to the Internal Revenue Service and the Franchise Tax Board." (Ex 35)

2) 9-17-91 Ashjian's letter to me states: **"I had heard . . . that the Puapuaa note was paid and you lent the money back to yourself or your development group."**

"For the record, if the partnership did get paid off I DEMAND that you immediately pay my monies to me." (Ex 36)

1993

On 6-23-93 attorney Frederick H. Stern filed two LASC Complaints on behalf of Ashjian:

(i) Ashjian v CCM Case No. BS 023 800

Re: his alleged PUA damages;

(ii) Ashjian v CCM Case No BS 023 801

Re: his alleged KAU damages

N.B. Initially these actions produced a mountain of paper but were eventually abandoned by Ashjian when I filed for Chapter 7 bankruptcy protection in May, 1996.

1996-1999

State Bar Proceedings

1) 1-23-96 Ashjian files a Complaint against me with the State Bar pertaining to KAU (Ex 37) and PUA (Ex 38) N.B. Ashjian's letterhead does not reveal that he is a CPA, nor does any of his subsequent correspondence with the State Bar!

2) 3-27-96 State Bar Investigator Garcia writes me a letter summarizing Ashjian's Complaint (Ex 39)

3) 4-19-96 I responded to Investigator Garcia's letter stating in substance that: (i) Never since being admitted to practice in June 1949 "has anyone ever filed a complaint with The State Bar of California relating in any way to my professional conduct – until the recent filing by Nazar Ashjian."; (ii) "At no time to the present has an attorney-client relationship ever existed between me and Mr. Ashjian."; and (iii) The "specious claims made by Mr.

Ashjian arise out of a business relationship which The State Bar of California has no jurisdiction to adjudicate."

"Nevertheless, Mr. Ashjian filed his Complaint in the false hope of intimidating me into making a sizeable settlement of his specious claims though knowing full well that an attorney-client relationship had never existed between us. I am confident The State Bar of California will not be party to this attempted shakedown." (Ex 40)

4) 2-20-97 Ten months later, Inspector Garcia responds to my letter of 4-19-96 stating "it appears there was a fiduciary duty you owed to Mr. Ashjian since the Arbitrator found that you, as a general partner of Kau-Kona Land Co., were a fiduciary" and that "We intend to proceed in this matter." Garcia then repeated the allegation of Ashjian's Complaint set forth in Garcia's letter of 4-19-96. (Ex 41)

5) 3-25-97 James R. Felton, of Greenberg and Bass, responded to Inspector Garcia's 2-19-97 letter with a 3 page letter noting that his office is representing me "with reference to various litigation, including an action currently in the bankruptcy court filed by Nazar Ashjian (*Ashjian v. McCarthy*, USBC Case No. SV 96-15656-AG.)."

Felton then states:

"First, we think that it is important that the State Bar understands that Mr. Ashjian's complaint is simply part of a scheme to, leverage Mr. McCarthy into submission in the civil action." [eg. the bankruptcy court action]

Felton concludes:

"With all of the above in mind, we believe that Mr. Ashjian's complaint is simply a product of his desire to

prevail in the civil arena. The bankruptcy court will ultimately determine whether Mr. McCarthy breached any fiduciary duty and whether Mr. McCarthy, notwithstanding his bankruptcy, should be held monetarily responsible for a monetary debt to Mr. Ashjian. That court is considering this matter and the State Bar should let the bankruptcy court be the adjudicator of the dispute between Mr. McCarthy and Mr. Ashjian." (Ex 42)

Ashjian's attempted extortion is again corroborated:

> 2-18-97: fax Ashjian/attorney Felton Re: IRS agent allegedly investigating KAU and PUA (Ex 43)
>
> 3-21-97: Ashjian Draft settlement Agreement requires payment of $35,000 rather than $25,000 previously agreed! (Ex 44)
>
> 4-8-97: fax Ashjian/attorney Felton Re: repeating his threat re IRS and FIB (Ex 45)

6) 4-30-97 Inspector Garcia's letter to Felton states "The State Bar of California would like to ask a few more questions regarding Mr. McCarthy's dealings with Mr. Ashjian."

This statement is followed by 7 paragraphs and Garcia's statement:

"In order to complete this investigation, we request your written response to these allegations along with any documentation." (Ex 46)

(Shortly thereafter Governor Pete Wilson vetoed the State Bar's annual dies authorization bill. Nothing further was heard from the State Bar for 2 years and 4 months.)

7) 8-23-99 Terrie Goldade, State Bar Deputy Trial Counsel, resurrected the State Bar's proceedings when she, wrote Felton:

"Based on a review of the investigation, it has been determined that unless a pre-filing settlement is reached, a Notice of Disciplinary Charges should be filed, charging the respondent with the commission of acts of professional misconduct, including but not limited to, violations of Business and Professions Code sections 6106 [Moral Turpitude, Dishonesty or Corruption Irrespective Of Criminal Conviction] and 6090.5(a)(2) [Atty/Client Agreement Not to File Complaint] in addition to possible Rules of Professional Conduct of the State Bar of California."

Goldade requests a call from Felton "to meet before September 12, 1999; otherwise, the Notice of Disciplinary Charges will be filed by the close of business on that date" (Ex 47)

8) My attorney, Henry T. Heuer, addressed a letter to Ms Goldade stating: "As we discussed earlier today, please consider this letter the formal request of Charles C. McCarthy for all discoverable documents including but not limited to 'all exculpatory evidence from the State Bar's investigation files,' as described in your August 23, 1999 letter. You estimated that these documents were approximately two reams in quantity. Please let me know the cost of these copies once you have made that determination.

This letter also confirms our meeting at your office on Wednesday, September 8, 1999 at 10:00 a.m."

Mr. Heuer and I met with Ms Goldade at the appointed time.

9) 9-14-99 Goldade presented the documents requested by Mr. Heuer's letter of Sept 1 being approximately 1,000 copies of undifferentiated documents piled in 3 amorphous stacks of paper. The colossally burdensome task of reading, evaluating and organizing this jumble of paper required at least 70 hours of my time.

To date, the State Bar has not specified my alleged "acts of professional misconduct" alluded to in Ms Goldade's letter constituting:

(i) "any act involving moral turpitude, dishonesty or corruption" with the meaning of Business and Professions Code § 6106; or

(ii) a violation of Business and Professions Code § 6090.5(a)(2); or

(iii) a violation of the Rules of Professional Conduct of the State Bar of California; or

(iv) a violation of any other law.

Attempting to ferret out the facts on which Ms Goldade might premise any charges against me from the 1,000 pages she produced, is literally impossible. This is particularly so because the documents are rife with gross misstatements of the facts, applicable law and applicable accounting principles relating to matters originating over 32 years ago in 1967!

It is my belief however that the incomprehensible claims embodied in the 1,000 pages constitute essentially the same issues of fact and law tried before the Bankruptcy Court on February 2 and 3, 1998 pursuant to Ashjian's Complaint To Determine Dischargeability.

The Bankruptcy Court's Joint Pretrial Order filed Dec 1, 1997 identified Disputed Issues Of Law:

"The following issues of law, and no others, remain to be litigated:

> 1. Whether the unsecured loan by the Limited Partnership to Pualani Development Co. in the amount of $1,400,00, [sic] per Exhibit 11, constituted a breach of fiduciary duty as a general partner of the Limited Partnership within the meaning of 11 U.S.C. Section 523(a)(4), and whether Debtor converted Plaintiff's capital account of $25,324 within the purview of 11 U.S.C. Section 524(a)(6) so as to render Plaintiff's claim nondischargeable? (emphasis added)
>
> 2. Whether certain transfers of funds from the Limited Partnership to Joy McCarthy constituted a breach of Debtor's fiduciary duty as a general partner of the Limited Partnership within the meaning of 11 U.S.C. Section 523(a)(4) and whether Debtor converted Plaintiff's capital account of $25,324 within the purview of 11 U.S.C. Section 524(a)(6) as to render Plaintiff's $25,324 claim nondischargeable? (emphasis added)
>
> 3. Are any of Plaintiff's claims relating to the Limited Partnership barred by the applicable state of limitations, the doctrines of laches, waiver or estoppel? (emphasis added)

Following oral argument on 2-3-98, the Bankruptcy Court ordered Judgment For Defendant Charles C. McCarthy on all issues; primarily on the grounds that all of Plaintiff Ashjian's claims were barred by applicable statutes of limitation. The Court referred to Exs 55 and 58 (Exs 19 and 20 herein) observing that:

– Ashjian mistrusted McCarthy since Feb 88

– by Sept 91 Ashjian had sufficient information to trigger a lawsuit

– Ashjian cannot "bootstrap" a claim barred by the Statute of Limitations in his Complaint To Determine Dischargeability

– there is no evidence that McCarthy pocketed any money but I don't have to decide that because the conversion claim is also barred

– Ashjian was aware of his claims in Sept 91

As to partnership bank accounts in my wife Joy's name, the Court commented in part:

– bank accounts created as a convenience do not constitute a breach of fiduciary duty

– there is no evidence that money in the bank account(s) in Joy McCarthy's name was used for other than partnership purposes

– there is no evidence of misuse, or impropriety or personal uses of money in partnership bank accounts in Mrs. McCarthy's name

I invite – indeed challenge – investigators of the State Bar to audit, with my full cooperation, all of the thousands of documents in my possession which confirm beyond a reasonable doubt the findings of the Bankruptcy Court that neither I, nor my wife Joy, used any money of the partnerships' for other than partnership purposes; nor did I ever violate my fiduciary duty to the partnerships.

The Bankruptcy Court's Joint Pretrial Order filed Dec 1, 1997 was preceded by the Court's MEMORANDUM OF DECISION RE: SUMMARY JUDGMENT entered Jul 29,

1997 (Ex 48) wherein the Court ruled on Ashjian's claims re: KAU that Defendant McCarthy was barred by the doctrine of collateral estoppel from contesting Plaintiff's LAMC judgment for $31,606.22 (p 4: 18-20); and PUA that "*Triable issues exist regarding the plaintiff's claim of nondischargeability as to the Puapuaa-Kona Land Company partnership*" (p 8: 14-16)

The Bankruptcy Court's ORDER ON MOTION FOR SUMMARY JUDGMENT was entered July 29, 1997 (Ex 49) No final Judgment has been entered thereon! When, and if it is, I shall file an appeal principally on the grounds that misapplication of the doctrine of collateral estoppel has deprived me of my day in court regarding Ashjian's PUA claims that are barred by applicable statutes of limitation.

Following the Bankruptcy Court's ordering Judgment For Defendant on all issues re: PUA; Ashjian filed his Request For Dismissal on Feb 10, 1998 in the matter of Nazar H. Ashjian, Jr. v Joy McCarthy, Et. Al., LASC Case No. LC 041 147. (Ex 50) Ashjian's Complaint in that matter had been filed on May 15, 1997. (Ex 51)

Ashjian's unverified Complaint set forth 14 Causes Of Action against Joy – the first 7 causes related to Ashjian's alleged claim re KAU and the remaining 7 causes related to his alleged claims re PUA

- The 5th cause alleged that Joy converted $20,946 of Ashjian's KAU capital account. (p 6)
- The 6th cause alleged that "Charles McCarthy purported to transfer to" Joy "assets" of KAU with "actual intent to hinder, delay or defraud the creditors of Charles McCarthy" and KAU "including Plaintiff in the collection of his claim." (p 7)

The 7th cause seeks "To Have Fraudulent Transfer Set Aside" (p 9) Ashjian's 12th, 13th and 14th causes (pp 12, 13 and 15) assert the same claims as the 5th, 6th and 7th causes cited above – with respect to Ashjian's alleged claims re PUA.

Subsequent to the filing of Ashjian's Complaint on May 15, 1997 there followed the predictable orgy of discovery, including issuance of a Deposition Subpena [sic] For Production of Business Records on Sep 11, 1997 (Ex 52) which was served on City National Bank Sep 22, 1997. (Ex 53)

Both the results of the Bankruptcy Court trial on Feb 2 and 3 1998 and Ashjian's Dismissal of his Complaint against Joy – confirm that: the filing of Ashjian's Complaint against Joy on May 15, 1997 was a consequence of my filing Chapter 7 bankruptcy on May 19, 1996; Ashjian's Complaint v Joy was patently specious as he well knew; and that Ashjian's Complaint was filed for the sole purpose of attempting to extort money from Joy!

Attached are copies of my letters to the KAU and PUA limited partnerships (Exs 54 and 55 respectively) accounting for my stewardship as General Partner of these partnerships from October 10, 1967 and November 20, 1968 respectively. I state without reservation that I take great pride in my stewardship of these partnerships.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed on November 3, 1999 at Los Angeles, California.

/s/ Charles C. McCarthy
CHARLES C. MCCARTHY

[SEAL] THE STATE BAR OF CALIFORNIA

180 HOWARD STREET
SAN FRANCISCO,
CALIFORNIA 94105-1639
TELEPHONE (415) 538-2000

September 29, 1999

TO WHOM IT MAY CONCERN:

This is to certify that according to the records of the State Bar, CHARLES CONNELL MCCARTHY was admitted to the practice of law in this state by the Supreme Court of California on June 14, 1949; that from the date of admission to January 27, 1994, he was an ACTIVE member of the State Bar of California; that on January 27, 1994, he transferred at his request to the INACTIVE status as of December 31, 1991; that from that date to July 6, 1999, he was an INACTIVE member of the State Bar of California; that on July 6, 1999, he transferred at his request to the ACTIVE status; that he has been since that date, and is at date hereof, an ACTIVE member of the State Bar of California; and that no recommendation for discipline for professional or other misconduct has ever been made by the Board of Governors or a Disciplinary Board to the Supreme Court of the State of California.

THE STATE BAR OF CALIFORNIA

/s/ Charlotte Blackford
Charlotte Blackford
Supervisor
Membership Records

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service I was at least 18 years of age and **not a party to this legal action.**

My residence or business address is: 15335 Morrison St. Ste. 104 Sherman Oaks, CA 91403

I mailed the within document(s) described as: VERIFIED PETITION FOR ORDER DIRECTING THE REVIEW DEPARTMENT OF THE STATE BAR COURT TO IMMEDIATELY COMPLY WITH BUSINESS AND PROFESSIONS CODE §6081 on the interested parties in this action.

I placed true copy(s) thereof enclosed in sealed envelopes(s) addressed as follows:

GENERAL COUNSEL (3 copies)
STATE BAR COURT OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CA 94105

CLERK (1 copy)
STATE BAR COURT
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

Date of mailing: 7-5-06

Place of mailing: Sherman Oaks, CA 91403

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Date: 7-5-06

/s/ Euvey Diaz [Illegible]

Type or print name Signature

APPENDIX F

[SEAL] THE STATE BAR OF CALIFORNIA

Tracey L. McCormick
Assistant General Counsel

180 HOWARD STREET
SAN FRANCISCO, CA 94105-1639

TEL. (415) 538-2324•
FAX (415) 538-2321

July 25, 2006

Clerk of the Court
Supreme Court of California
350 McAllister Street
San Francisco, CA 94102-3600

Re: *In the Matter of McCarthy, Charles C. On Discipline*
Petition for Review
Case No. S145019

Dear Clerk,

This letter is to advise the court that the State Bar of California does not intend to file an answer to the above petition, pursuant to California Rules of Court, Rule 28(a)(2), unless the Court requests briefing on the issues. In any event, it appears from the Court's website that the record of discipline was filed on the same day as the Petitioner's brief, rendering the matter moot.

If you have any questions or concerns, please feel free to call me at the number listed above.

Sincerely,

/s/ Tracey McCormick
Tracey McCormick
Assistant General Counsel

TLM/tlm

cc: Charles C. McCarthy ✓
17320 Burbank Blvd. Apt. #14
Encino, CA 91316

APPENDIX G

THE SUPREME COURT OF THE
STATE OF CALIFORNIA

In the Matter of	) Case No.: 03-N-02791 and
	) 04-O-11745
CHARLES C. McCARTHY	) SUPPLEMENT TO VERI-
	) FIED PETITION FILED
A Member of the State Bar.	) HEREIN ON JULY 5, 2006
	) WITH THE CLERK OF THE
	) SUPREME COURT AT LOS
	) ANGELES, CALIFORNIA

TO THE HONORABLE CHIEF JUSTICE AND ASSOICATE [sic] JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

1. By envelope post-marked **JUL 27 2006** – Petitioner received a copy of a letter dated **July 25, 2006** addressed to the Clerk of the California Supreme Court re this matter, by Tracey McCormick, Assistant General Counsel of The State Bar Of California stating:

> "Dear Clerk,
>
> This letter is to advise the court that the State Bar of California does not intend to file an answer to the above petition, pursuant to California Rules of Court, Rule 28(a)(2), unless the Court requests briefing on the issues. In any event, it appears from the Court's website that the record of discipline was filed on the same Day as the Petitioner's brief, rendering the matter moot.

> If you have any questions or concerns, please feel free to call me At the number listed above.
>
> Sincerely,
>
> /s/
>
> Tracey McCormick
> Assistant General Counsel
>
> TLM/tlm"

2. Ms. McCormick's cryptic, single sentence declaring **"the matter moot"** implemented an evil cunning State Bar scheme to summarily deprive Petitioner of due process of law in violation of the 14th Amendment of The Constitution of the United States

3. The unambiguous intent of the State Bar's **July 25, 2006** letter was to induce the Clerk of the Supreme Court Of California to cause the prompt Dismissal With Prejudice of Petitioner's Verified Petition filed herein on **July 5, 2006**!

4. The State Bar thereby intended to avoid having to file their Verified responses to Petitioner's Verified Petition, re the allegations of ¶s 2 and 3 thereof, charging that members of the State Bar Court of "**willfully**" committed acts involving "**moral turpitude**" in violation of **Rule 1-100**, Rules of Professional Conduct and State Bar Act §6106 respectively!

5. Irrefutably, the State Bar's proceedings against Petitioner constitutes cruel and unusual punishment to a man who stated in his State Bar Declaration of November 9, 1999:

> "I have earned a personal and professional reputation over fifty years that I cherish and for

which I will die." (**Ex 1**, ¶1, p1 quoted at ¶3, p2 Verified Petition)

6. The State Bar's implementation of its reprehensible scheme referred to above, is an arrogant, shameful failure to act responsibly as "***an administrative arm***" of the Supreme Court of the State of California! (*Herrscher v. State Bar* (1935), 4 Cal.2d 399, 49 P2d 837.

7. Ineluctably, The Supreme Court of the State of California must impose severe sanctions upon The State Bar Court and its individual members responsible for their outrageous, unlawful conduct referred to in ¶s 1, 2 and 3 of Petitioner's Verified Petition filed herein on **July 5, 2006**; and ¶s 2, 3, 4, 5 and 6 of this Supplement to said Verified Petition. Members of the State Bar and the State Bar Court are not above the law applicable to all members of The State Bar of California – including, but not limited to: [1]Business and Professions Code #6081; [2]State Bar Act §6106; [3]Rule 1-100 Rules of Professional Conduct and [4]the due process clause of the 14th Amendment to The Constitution of the United States!

Dated: August 3, 2006

Respectfully submitted,

/s/ Charles C. McCarthy

CHARLES C. McCARTHY
17320 Burbank Blvd., #14
Encino, CA 91426
Tel: (818) 981-1391
Fax: (818) 981-3503

VERIFICATION

I, CHARLES C. MCCARTHY, am the Petitioner in this proceeding. I have read the foregoing Supplement to Verified Petition and know the contents thereof. The factual statements set forth in said Supplement are within my personal knowledge and I know them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this verification was executed on the third day of August 2006 in Los Angeles, California.

/s/ Charles C. McCarthy
CHARLES C. McCARTHY

PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

At the time of service I was at least 18 years of age and **not a party to this legal action.**

My residence or business address is: _____
15335 MORRISON ST STE 104, SHERMAN OAKS, CA 91403

I mailed the within document(s) described as: SUPPLEMENT TO VERIFIED PETITION FILED HEREIN ON JULY 5, 2006 WITH THE CLERK OF THE SUPREME COURT AT LOS ANGELES, CALIFORNIA on the interested parties in this action.

I placed true copy(s) thereof enclosed in sealed envelopes(s) addressed as follows:

GENERAL COUNSEL (3 copies)
STATE BAR COURT OF CALIFORNIA
180 HOWARD STREET
SAN FRANCISCO, CA 94105

CLERK (1 copy)
STATE BAR COURT
300 SOUTH SPRING STREET
LOS ANGELES, CA 90013

Date of mailing: 08/03/2006

Place of mailing: Sherman Oaks, California

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Date: 08/03/2006

/s/ Stephen Raheb [Illegible]
Type or print name Signature